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ANDREAS ABRAMSON

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
MODESTO DIVISION

In Re:
ANDREAS ABRAMSON
Debtor.

Case No. 18-90258-E-7

Chapter 7

DCN: MF-6

Date: December 20, 2018

Time: 10:30 a.m.

Place: 1200 I Street, Suite 4
Modesto, California

Hon. Ronald H. Sargis

DEBTOR'S RESPONSE TO SUPPLEMENTAL BRIEF OF BERNADETTE CATTANEO

Debtor, Andreas Abramson, responds to the supplemental brief of Bernadette Cattaneo regarding the issues posed by the court in its order of October 26, 2018, as follows:

I. CATTANEO'S ARGUMENT THAT THE STATUTE IS VOID BECAUSE
CONTRARY TO STATE LAW IS INCORRECT

The United States Supreme Court has consistently held that federal law trumps state law. *McCulloch v. State of Maryland*, 17 US 316 (1819), *Cohens vs Virginia*, 19 US 264 (1821). Cattaneo takes this argument to an extreme by suggesting that a bankruptcy court may declare a federal statute unconstitutional (Supplemental Brief, 5:1-16). There is no pending motion in the appropriate court to obtain such a declaration.

1 II. NO EVIDENCE TO SUPPORT CONTENTIONS OF FRAUD, COLLUSION, ETC.

2 Cattaneo suggests in several points of her brief that the Debtor and his father are insiders who
3 manufactured impairment by collusively creating junior liens (Brief, 2:18). It is not clear if Cattaneo
4 is saying that the deed of trust is void because it secures a false claim, or that the fact of its existence
5 is fraudulent because between father and son, even though recorded four years before bankruptcy.
6 These are serious contentions yet no evidence is submitted in support of this proposition, even
7 though Cattaneo learned two months ago that December 20, 2018 was the date of the hearing (Order
8 for Supplemental Briefing, October 26, 2018.) In an effort to smoke out this issue, Debtor
9 encouraged Cattaneo to promptly depose his father, even noticed his father's deposition, but then
10 cancelled it when creditor McAbee's counsel protested that he was not ready because he needed time
11 to review debtor's documents. These documents were produced weeks ago, but neither counsel
12 noticed the deposition until last week, setting it for January, and now complaining that she has no
13 evidence because the lienholder will not be deposed until then. The court scheduling order of
14 October 26, 2018 provided that that the matter would be heard on December 20, 2018, and that
15 McAbee's pleadings were due on December 7, 2018, yet did nothing to adequately prepare. This is
16 a serious failure of proof and, to the extent that Cattaneo relies upon fraud and/or collusion to avoid
17 the lien, her objection should be overruled.
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20 III. "WINDFALL" DEFENSE IS FATUOUS

21 Cattaneo's arguments about "sandwiches" and "windfalls" is really an attack on the
22 perceived inappropriateness of the debtor's right to discharge and a "fresh start," not unlike the
23 creditor who must return a preference (547(b) and 550); surrender a leasehold that would otherwise
24 have priority over the purchaser of real property [*In re Spanish Peaks Holdings II, LLC*, 872 F.3d
25 892 (9th Cir. 2017)], suffer a lien stripped-off under Section 506; accept a cure of a deed of trust
26 more than three months after recording the notice of default under either Chapter 11 or Chapter 13,
27 etc.
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2 IV. CONCERNS OF A FEW LOWER COURTS IS NO REASON TO IGNORE THE
3 “PLAIN LANGUAGE” OF THE STATUTE

4 Ex-wife’s argument is reminiscent of the recent “concern” expressed by many bankruptcy
5 judges and practitioners over the application of the Absolute Priority Rule in the case of the
6 individual Chapter 11 debtor. The feeling was that, because increased home values precluded
7 Chapter 13 for those who would otherwise resort to that chapter. and required use of Chapter 11,
8 they should therefore be treated the same as if they filed Chapter 13. *In re Shat*, 424 B.R. 854
9 (Bankr. D Nevada 2010). Law review articles by prominent jurists and attorneys were written
10 opposing the application of absolute priority rule in the individual Chapter 11 context. This position
11 was ultimately rejected by the Ninth Circuit in *Zachary vs California Bank & Trust*, 811 F.3d
12 1191(9th Cir. 2016), where the plain language of the statutes prevailed. Indeed, Cattaneo very clearly
13 accepts, as she must, that the language of Section 522(f)(2) is “plain.” (Supplemental Brief 2:24).
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16 V. CONCLUSION

17 Debtor submits that Cattaneo’s objections based upon conflict with state law, concerns of
18 other judges, and collusion are not a basis for ignoring the statute that has been strictly construed by
19 the Bankruptcy Appellate Panel of this circuit. *In re Charnock*, 318 B.R. 720 (9th Cir. BAP 2004).
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21 DATED: December 14, 2018

MACDONALD FERNANDEZ LLP

22 By: /s/ Iain A. Macdonald.
23 Iain A. Macdonald,
24 Attorneys for Debtor Andreas Abramson
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